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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,798	12/05/2003	Cory A. Weiss	109044-00006	2677
7590	08/12/2004			EXAMINER
Miller, Canfield, Paddock and Stone P.L.C. c/o Robert Kelley Roth Suite 2500 150 West Jefferson Ave Detroit, MI 48226			YEUNG, JAMES C	
			ART UNIT	PAPER NUMBER
			3749	
			DATE MAILED: 08/12/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/730,798	WEISS, CORY A.
	Examiner James C Yeung	Art Unit 3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 05 December 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 14 and 15 is/are allowed.
- 6) Claim(s) 1-13 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12052003.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no proper antecedent basis for “the mounting ring” in line 2.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Sattmann.

The structure as claimed is fully anticipated by Sattmann.

In particular, Sattmann shows in Fig. 1-5 a damper control device comprising, in combination;

a fireplace (12) and a flue (24), wherein products of combustion from the fireplace enter the flue;

a damper (28) positioned in a damper pipe (50) operatively connected to the flue (24); wherein the damper is movable between a closed position where the damper pipe is blocked and an open position;

a motor (30) having a rotatable shaft (not numbered) ending therefrom operatively connected to the damper (30); and

a control circuit (36) which transmits a fireplace signal to open a gas valve (18) to initiate combustion and to close a gas valve terminate combustion at the fireplace (12), and which receives a damper signal (32 and/or col. 4, lines 7-9) indicating whether the damper (28) is in the closed position or the open position;

wherein when a fire is desired at the fireplace, the control circuit (36) sends the fireplace signal to open the gas valve after receiving the damper signal (32) indicating that the damper is in the open position (col. 2, lines 3-8).

In regard to claim 2, Sattman discloses in col. 3, lines 45-47 that the fireplace is equipped with a suitable ignition apparatus to ignite gas at the gas fireplace.

4. Claims 8, and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Szwartz '522. The structure as claimed is fully anticipated by Szwartz '522.

In particular, Szwartz '522 shows in Figs. 1-3 a damper control device comprising, in combination:

s damper pipe (24) adapted to be connected to a flue;

a damper (44) positioned in the damper pipe (24) and movable between a closed position and an open position;

a motor (48) having a rotatable shaft (42) extending therefrom operatively connected to the damper (44); a control circuit (58) which controls the motor (48) to rotate the shaft and in turn rotate the damper (44) to be closed position and to the open position; and

a mounting member (at 16, Fig. 1), wherein the mounting member is a plate extending generally perpendicularly from the damper pipe (24) and is adapted to connect to a chimney (14 and/or col. 4, lines 62-65).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3, and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sattmann in view of Grostuck.

Grostuck teaches the use of a time delay for the purpose of delaying the operation of a damper plate so as to permit the burner flame to be extinguished and exhaust gases removed from a burner before the damper plate is closed (col. 6, lines 51-57).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to operate the damper plate of Sattmann in the manner as taught by Grostic in order to permit the burner flame to be extinguish and exhaust gases removed from the fireplace before the damper plate is closed.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sattmann in view of Francisco, Jr.

Francisco, Jr. teaches the use of a status module (31, Fig. 3) comprising at least one indicators and a damper control switch for the purpose of allowing an operator to automatically open and close a damper plate by activating the switch (col. 5, lines 1-4).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the damper control device of Sattmann with at least one indicator and a damper control switch in the manner as taught by Francisco, Jr. in order to automatically open and close the damper plate by activating the damper control switch.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sattmann in view of Francisco, Jr.

Francisco, Jr. teaches the use of a statue module (31, Fig. 3) comprising a multiple of indicators (32-37, Fig. 3) for the purpose of displaying different conditions of a chimney safety and control system.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the damper control device of Sattmann with a status module comprising a multiple indicators such as taught by Francisco, Jr. in order to display different conditions of the damper control device.

9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sattmann in view of Francisco, Jr.

Francisco, Jr. teaches the use of a control circuit for the purpose of holding a damper plate in an open position when a predetermined condition comprising at least one of heat, carbon dioxide concentration, and carbon monoxide concentration is present (col. 5, lines 38-65).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the damper control device of Sattmann with a control circuit in the manner as taught by Francisco, Jr. in order to hold the damper plate in an open position when a predetermined condition comprising at least one of heat, carbon dioxide concentration, and carbon monoxide concentration is present.

10. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Szwart '522 in view of Pinkerton.

Pinkerton teaches the use of a plurality of mounting brackets (13, Fig. 4) for the purpose of securing a chimney cap to a chimney.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the mounting member of Szwart '522 with a plurality of mounting brackets such as taught by Pinkerton in order to secure the damper control device to the chimney.

11. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Szwart '522 in view of Woolfolk

Woolfolk teaches the use of a shroud having a plurality of ventilated holes (131, Fig. 1) for the allowing air to circulate therein for cooling.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the shroud of Szwart '522 with a plurality of ventilation holes such as taught by Woolfolk in order to allow air to circulate therein for cooling.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Szwartz '097 is cited to show stack damper control system.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James C Yeung whose telephone number is 703 308-1047. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3749

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JY
July 29, 2004


James C. Yeung
Primary Examiner